*__THE HONOURABLE SRI JUSTICE V.V.S.RAO__

+WRIT PETITION No.2572 of 2007

% 15-3-2007

Mr.Bogireddy Chandra Reddy S/o Veera Reddy and another

...Petitioners

AND

$ The Mandal Revenue Officer, Vetapalem, Prakasam District and another

...Respondents

! COUNSEL FOR PETITIONER: Smt.A.Chaya Devi

^ COUNSEL FOR RESPONDENTS: Government Pleader for Revenue

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>HEAD NOTE:

? CASES REFERRED:

1. 2006(5) ALD265
2. 1990(1) An WR 205

THE HON'BLE SRI JUSTICE V.V.S.RAO

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Between:

Mr.Bogireddy Chandra Reddy, S/o.Veera Reddy
And another

… Petitioners

AND

The Mandal Revenue Officer, Vetapalem, Prakasam District

And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2572 of 2007

ORDER:

The petitioners filed the instant writ petition seeking a writ of Mandamus declaring the action of the first respondent, namely, the Mandal Revenue Officer, Vetapalem Mandal, Prakasam District (MRO), in dispossessing the petitioners from their lands in survey Nos.297/11, 298/1 and 298/2 situated at Ramannapet village of Vetapalem Mandal in Prakasam District. A consequential direction is also sought to respondents not to dispossess the petitioners without due process of law.

The petition allegations are as follows. The first petitioner was assigned an extent of Acs.1.80 in survey No.298/2 in 1978. The second petitioner was assigned Acs.1.13 in survey Nos.298/1, 298/2 and 297/11. They were also given Pattadar Pass Books (PPBs) and they have been in possession and cultivating the same. They planted Mango, Sapota and Amta trees. On 08.2.2007 the MRO came with subordinate staff and started measuring the lands. The petitioners objected for the same. On enquiries, they came to know that the land was allotted to landless poor persons as house sites under Integrated Novel Development In Rural And Model Municipal Areas (INDIRAMMA) scheme. The petitioners allege that the MRO without issuing show cause notice, without conducting enquiry and without cancelling the PPBs, cannot dispossess them and allot the land to landless poor persons.

The matter was taken up for preliminary hearing. Learned Assistant Government Pleader on instructions submitted that the subject land was already resumed and was assigned as house sites to eligible beneficiaries under INDIRAMMA scheme. He sought time for filing counter. Subsequently on 27.2.2007 the first respondent filed counter affidavit opposing the writ petition. It is stated in the counter affidavit that the land admeasuring Acs.0.45 in survey No.297/11 of Ramannapet H/o.Vetapalem was assigned to second petitioner in 1358 Fasli. On enquiry by the MRO, it was noticed that the second petitioner sold away the land to Pogadadanga Ravi Kumar, Lecturer in St.Ann's College of Engineering, Challareddypalem Village under agreement of sale-cum-General Power of Attorney (GPA) showing the land as survey No.297/8, 9 vide registered document No.1830/06 dated 10.4.2006 for an extent of Acs.0.68. It was found that the

purchaser was actually in possession of land in survey No.297/11 admeasuring Acs.0.45. The land in survey No.297/8, 9 to the extent of Acs.1.81 was assigned to others. They also sold away the land to Pogadadanga Ravi Kumar under registered document No.1645/06 dated 27.3.2006. The purchaser is trying to sell away the land by making into house plots as the land is adjacent to residential locality. During inspection it was found that there was no standing trees or crops in the land and it is vacant. Therefore, a notice in Form No.I was issued to the purchaser on 30.12.2006. He did not submit explanation. By proceedings dated 29.1.2007, the MRO resumed the land and possession was taken on the same day. The land in survey No.297/8, 9 was assigned to Nakka Narayana Reddy and Nakka Narasimha Reddy to the extent of Acs.0.85 and Acs.0.96 respectively. These assignees sold the land to Ravi Kumar under registered documents. Action was also initiated against them and the land was resumed. It is also averred that no action was taken in respect of the land in survey Nos.298/1 and 298/2. But the land admeasuring Acs.0.45 in survey No.297/11 was resumed and possession was taken on 29.1.2007. House site pattas were also issued in respect of this land. The writ petition is filed suppressing these facts.

The petitioners filed reply affidavit. The allegation that the second petitioner sold Acs.0.45 in survey No.297/11 under registered agreement of sale-cum-GPA is denied. It is however admitted that the first petitioner entered into an agreement of sale-cum-GPA on 10.4.2006 for an extent of Acs.0.68 in survey No.297/8, 9 under the impression that the said land belongs to his family but later it was cancelled vide registered document dated 26.12.2006. The allegation that the petitioners entered into agreement in respect of assigned land is denied. Alternatively it is pleaded that even if there is alienation of assigned land in contravention of the provisions of Section 3(2) of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity), the petitioners being landless poor persons are entitled for restoration of the land under Section 4(1)(b) of the Act.

Learned Counsel for the petitioners submits that unless and until there is conclusive evidence that the assignee alienated the land in contravention of Section 3(2) of the Act, the MRO as an Authorized Officer cannot initiate any action against the assignee under Section 4 of the Act. Therefore, learned Counsel would contend that though the second petitioner entered into agreement-cum-GPA in respect of the other land, so far as the assigned land is concerned the petitioners never entered into agreement of sale with Ravi Kumar. Secondly, she would contend that as required under A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977 (the Rules, for brevity) and the

provisions of the Act, no notice was issued to the petitioners before cancelling the assignment and resuming the land. Lastly, she submits that under Section 4(1)(b) of the Act, after resumption of the assigned land alienated in contravention of the Act, the Authorised Officer has to restore the land to the assignee or the legal heirs of the assignee. The petitioners are entitled for the benefit.

Learned Assistant Government Pleader for Revenue (General-A) submits that in the guise of selling the land in survey No.297/8, 9 admeasuring Acs.0.68, which is allegedly adjacent to the assigned land in survey No.297/11, the petitioners in fact sold away the assigned land. The MRO conducted inspection before taking action under the Act and it was found that purchaser Ravi Kumar was dividing the land in survey No.297/11 as house plots and he was in possession, and therefore, the action of the MRO in resuming the land is well within the jurisdiction. Secondly, he would contend that as per the amendment to Section 4(1)(b) of the Act, every assignee is not entitled for restoration of the land automatically and discretion is given to authorised officer to restore the land having regard to practicability in assigning such land. According to the learned Assistant Government Pleader if it is not practicable for reassigning/restoring the land to the assignee or legal heirs, the authorities cannot be compelled to do so.

When this matter was heard on 08.3.2007 before the respondents filed counter affidavit, this Court having found that the petitioners have not filed copies of the assignment orders made in their favour in 1978, granted time to the learned Counsel for the petitioners to produce them. The same are not produced before this Court. Therefore, it is not clear as to what is the actual extent of land assigned to the petitioners. Secondly, the MRO initiated action after conducting field inspection during which it was found that the petitioners were not in possession of the land and Pogadadanga Ravi Kumar was found in possession of the land in survey No.297/11 as well as the land in survey Nos.297/8, 9 by virtue of registered documents. The particulars of the registered documents whether they are described as sale deeds or sale agreements-cum-GPA are given in the counter affidavit. Though reply affidavit is filed, the petitioners do not advert to this aspect of the matter. There is no specific rebuttal on this. A mere denial that they did not alienate the assigned land or a suggestion that what was alienated was other land would not be sufficient demur. When the MRO found during the inspection that Ravi Kumar was in possession of the lands in survey Nos.297/8, 9 and 297/11, the provisions of the Act are attracted. As per the Rules, the person in occupation is required to be given notice to show cause as to why the land should not be resumed. The possession of the land with a third

party other than the original assignee or legal heir itself would lead to an inference that there was transfer/alienation of the assigned land by known method of transfer of immovable property. The evidence relied on by the MRO was clinching. Inference drawn by the statutory authority cannot be faulted.

The plea that the petitioners are entitled for restoration of land under Section 4(1)(b) of the Act is misconceived. As it originally stood before its amendment in 2006, it reads as under.

> **4. Consequences of breach of provisions of Section 3:-** (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may by order –
>
> (b) restore the assigned land to the original assignee or his legal heir, or **where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment of landless poor persons in accordance with the rules for the time being in force**:
>
> Provided that the assigned land shall not be so restored to the original assignee or his legal heir, more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.
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> (emphasis supplied)

Interpreting the above provision, this Court in **Yellamma v State of A.P.**[1] after referring to a binding precedent held as under.

> Section 4(1)(b) of the Act must be read as enabling an assignee, who suffered an order of resumption under Section 4(1)(a) of the Act, only when the land which was resumed is available for assignment and when it is reasonably practicable to restore the land to the assignee or the legal heir. There could be number of situations when it may not be reasonably practicable to restore the land to the assignee even if the land is available. In **P.Gopal Reddy v. Mandal Revenue Officer**[2], His Lordship Justice K.Ramaswamy (as His Lordship then was) considered a similar question. Dealing with this aspect of the matter, it was laid down as under.
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> 10. Ejectment of the persons in possession of the assigned lands under the void transfer is mandatory save as covered by Sec.3(5) of the Act. The Collector or the authorized officer is enjoined to have the transferee ejected and restitute possession only once to the assignee or his legal heirs if available. The restitution to the assignee or his heirs, in the first instance, despite the contravention by the assignee, is mandatory. In case he commits contravention

once over, it is mandatory that the State shall resume the land, but in either case, the assignment of the said land "shall be to another landless poor person for the purpose of cultivation or in case of assignment for house site, for the purpose of construction of house for residence which is a fundamental right under Article 19(1)(e). The petitioner, thereby, is normally entitled to restoration of possession. The question then emerges is whether the Collector is justified in his failure to restitute the land to the petitioner.

11. It is seen from the undisputed facts that though the land in question was assigned only for the purpose of cultivation, it no longer subserves the original purpose viz., cultivation as it now became the Urban property fit for construction of houses. In fact, the transferee laid 32 plots and sought approval from the second respondent. By virtue of the changed circumstances, the petitioner will no longer be in a position to cultivate the assigned land. His transfer for the purpose of house sites again would be in contravention of not only under the terms of the grant, but also is void under the Act. Thereby, the petitioner cannot be restituted the assigned lands.

There is an unrebutted averment in the counter affidavit that the land is situated in the residential locality and that the purchaser tried to sell the land by dividing into house plots. This would show that the land is no more agricultural land. Therefore, as of right the assignee would not get a right for restoration of land if it is not reasonably practicable to restore to assignee. After amendment to the Act by A.P. Assigned Lands (Prohibition of Transfers) (Amendment) Ordinance, 2006, Section 4(1)(b) of the Act reads as under.

4. Consequences of breach of provisions of Section 3:- (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may by order –

(b) except in certain areas as may be notified by the Government from time to time depending upon the need and circumstances and on the case by case basis in this behalf, restore the assigned land to the original assignee or his/her legal heir, if the assigned land is being used for the purpose of the original assignment land it is reasonably practicable to restore it to the original assignee or his/her legal heir.

Provided that for such restoration, the original assignee or his/her legal heir, as the case may be, shall be eligible for such land assignment at the time of such restoration:

Provided further that the assigned land shall not be restored more than once to either the original assignee or his/her legal heir, as the case may be:

Provided also that in case, the assigned land cannot be so restored to the original assignee or his/her legal heir due to any of the reasons mentioned above, it shall be resumed to the Government:

Provided also that the lands resumed by the Government shall be utilized for weaker sections housing, public utilities, infrastructure development or for any other public purpose.

(emphasis supplied)

A plain reading of the above provision would show that the right of the assignee to seek restoration of land after resumption even if he continues to be eligible i.e., landless and poor is not absolute. If such land is required by the Government for any other public purpose or the Government decides to reserve the land for a future expansion of a project etc., the assignee cannot compel the authorised officer or any Government Officer to restore the same land.

In the result, for the above reasons, the writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

March 15, 2007.

NOTE:

L.R. Copy be marked.

(By order)

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[1] 2006(5) ALD 265

[2] 1990(1) An WR 205